



The Regular Meeting of the West Valley City Council will be held on Tuesday, May 5, 2015, at 6:30 PM, in the City Council Chambers, West Valley City Hall, 3600 Constitution Boulevard, West Valley City, Utah. Members of the press and public are invited to attend.

Posted 04/29/2015, 4:00 PM

A G E N D A

1. Call to Order
2. Roll Call
3. Opening Ceremony: Councilmember Karen Lang
4. Special Recognitions
5. Approval of Minutes:
 - A. April 21, 2015 (Regular Meeting)
6. Awards, Ceremonies and Proclamations:
 - A. Employee of the Month Award, May 2015 - Detective Justin Boardman, Police Department
7. Comment Period:

(The comment period is limited to 30 minutes. Any person wishing to comment shall limit their comments to five minutes. Any person wishing to comment during the comment period shall request recognition by the Mayor. Upon recognition, the citizen shall approach the microphone. All comments shall be directed to the Mayor. No person addressing the City Council during the comment period shall be allowed to comment more than once during that comment period. Speakers should not expect any debate with the Mayor, City Council or City Staff; however, the Mayor, City Council or City Staff may respond within the 30-minute period.)

West Valley City does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting and we will try to provide whatever assistance may be required. The person to contact for assistance is Sheri McKendrick.

- A. Public Comments
 - B. City Manager Comments
 - C. City Council Comments
8. Resolutions:
- A. 15-73: Award a Contract to Cowboy Contractor Corporation for the 2600 South Ditch Piping Project
 - B. 15-74: Approve Change Order No. 8 to the Contract with Ace Construction for Construction of the Glenn Weaver Memorial Park
 - C. 15-75: Approve an Agreement with North Jordan Irrigation Company for the Lease of .17 Acres of City Property Located at 3750 South 3600 West
9. New Business:
- A. City Manager Submit FY 2015-2016 Proposed Budget
10. Motion for Executive Session
11. Adjourn

MINUTES OF COUNCIL REGULAR MEETING – APRIL 21, 2015

-1-

THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, APRIL 21, 2015, AT 6:30 P.M., IN THE COUNCIL CHAMBERS, WEST VALLEY CITY HALL, 3600 CONSTITUTION BOULEVARD, WEST VALLEY CITY, UTAH. THE MEETING WAS CALLED TO ORDER AND CONDUCTED BY MAYOR BIGELOW.

THE FOLLOWING MEMBERS WERE PRESENT:

Ron Bigelow, Mayor
Corey Rushton, Councilmember At-Large
Lars Nordfelt, Councilmember At-Large
Tom Huynh, Councilmember District 1
Steve Buhler, Councilmember District 2
Karen Lang, Councilmember District 3
Steve Vincent, Councilmember District 4

Wayne Pyle, City Manager
Sheri McKendrick, City Recorder

STAFF PRESENT:

Nicole Cottle, Assistant City Manager/CED Director
Eric Bunderson, City Attorney
John Evans, Fire Chief
Layne Morris, CPD Director
Sam Johnson, Strategic Communications Director
Marie Guarascio, Acting Finance Director
Jason Ereksen, Acting Parks and Recreation Director
Phil Quinlan, Acting Police Chief
Jake Arslanian, Acting Public Works Director
Mark Nord, CED Department
Steve Pastorik, CED Department
Darrin Nerdin, Parks and Recreation Department
Kevin Conde', Administration
Jerry Schlieff, Public Works Department

16986 **OPENING CEREMONY**

The Opening Ceremony was conducted by Tom Huynh who led the Pledge of Allegiance to the Flag.

16987 **APPROVAL OF MINUTES OF REGULAR MEETING HELD APRIL 7, 2015**

The Council read and considered Minutes of the Regular Meeting held April 7, 2015. There were no corrections, changes, or deletions.

MINUTES OF COUNCIL REGULAR MEETING – APRIL 21, 2015

-2-

After discussion, Councilmember Vincent moved to approve the Minutes of the Regular Meeting held April 7, 2015, as written. Councilmember Nordfelt seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16988

RECOGNITION OF JANICE FISHER FOR 30 YEARS OF SERVICE ON THE WEST VALLEY CITY TREE COMMITTEE

Mayor Bigelow welcomed long-time resident and former Councilmember, Janice Fisher, and her husband Barry Fisher. He read a narrative and presented a plaque to Ms. Fisher for her 30 years of service on the West Valley City Tree Committee.

Ms. Fisher addressed the City Council and expressed appreciation for the recognition and also thanked others on the West Valley City Tree Committee that she mentioned by name. She stated it had been a pleasure working with the committee members and all the volunteers over the years. She also shared some history and background information regarding creation of the Committee, established in honor of the City's 5th anniversary of incorporation. She discussed fundraising efforts for a project to purchase trees for City Park and others. She also discussed the vision and other projects to purchase trees to beautify the City and create a beautiful urban forest. She informed West Valley City had qualified for Tree City USA for many years. She expressed appreciation to City staff, boy and girl scouts, volunteers, community groups, and all others who had contributed to the beautification effort. She also shared memories and mementos and expressed her love for West Valley City.

On behalf of the City Council, the Mayor expressed great appreciation to Ms. Fisher for her service to West Valley City.

16989

COMMENT PERIOD

Upon inquiry, the following information was discussed during the comment period:

MINUTES OF COUNCIL REGULAR MEETING – APRIL 21, 2015

-3-

A. CITY COUNCIL COMMENTS

Councilmember Vincent stated this Friday was Arbor Day and a tree planting had been scheduled at Stonebridge Golf Course.

Upon inquiry, Darrin Nerdin, the City's urban forester, addressed the City Council and discussed details regarding the tree planting project and the businesses and community groups that would be participating. He also noted that 80 volunteers would help with the project.

Councilmember Lang commended Darrin Nerdin for the great job he did in adding trees every year through donations and grant opportunities.

16990

PUBLIC HEARING, ACCEPT PUBLIC INPUT REGARDING APPLICATION NO. ZT-1-2015, FILED BY WEST VALLEY CITY, REQUESTING TO AMEND SECTION 7-6-1605 OF THE WEST VALLEY CITY MUNICIPAL CODE REGARDING HEIGHT REQUIREMENTS IN THE CITY CENTER ZONE

Mayor Bigelow informed a public hearing had been advertised in order for the City Council to hear and consider public comments regarding Application No. ZT-1-2015, filed by West Valley City, requesting to amend Section 7-6-1605 of the West Valley City Municipal Code regarding height requirements in the City Center zone.

Mayor Bigelow presented proposed Ordinance No. 15-14 related to the application to be considered by the City Council after the public hearing, as follows:

Proposed Ordinance No. 15-14 would amend Section 7-6-1605 of the West Valley City Municipal Code to clarify height requirements in the City Center zone.

Staff had proposed some clarifying amendments to paragraph 7 of Section 7-6-1605 that addressed height requirements in the zone. The proposed amendment, attached to the information provided to the Council, did not change any of the height standards but simply clarified how they were applied.

To create a transition between tall buildings in the middle of the City Center zone and single-family homes just outside of the zone, the existing ordinance included lower height standards for those areas within 100-feet of existing single-family homes. The proposed revision clarified that if buildings were partially within the 100-feet and partially outside the 100-feet, both the lower and higher standards would apply to the respective portions of a building.

MINUTES OF COUNCIL REGULAR MEETING – APRIL 21, 2015

-4-

Mayor Bigelow opened the public hearing. There being no one to speak in favor or opposition, Mayor Bigelow closed the public hearing.

ACTION: ORDINANCE NO. 15-14, AMENDING SECTION 7-6-1605 OF THE WEST VALLEY CITY MUNICIPAL CODE TO CLARIFY HEIGHT REQUIREMENTS IN THE CITY CENTER ZONE

The City Council previously held a public hearing regarding Application No. ZT-1-2015, filed by West Valley City, and considered proposed Ordinance No. 15-14 that would amend Section 7-6-1605 of the West Valley City Municipal Code to clarify height requirements in the City Center zone.

After discussion, Councilmember Buhler moved to approve Ordinance No. 15-14, an Ordinance Amending Section 7-6-1605 of the West Valley City Municipal Code to Clarify Height Requirements in the City Center Zone. Councilmember Lang seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16991 RESOLUTION NO. 15-68, AUTHORIZE THE CITY TO RENEW A POLICY WITH EMI TO PROVIDE DENTAL BENEFITS FOR CITY EMPLOYEES FOR FISCAL YEAR 2014-2015

Mayor Bigelow presented proposed Resolution No. 15-68 that would authorize the City to renew a policy with EMI to provide dental benefits for City employees for fiscal year 2014-2015.

EMI was the current provider for dental benefits for City employees and premiums would not increase for fiscal year 2014-2015.

After discussion, Councilmember Rushton moved to approve Resolution No. 15-68, a Resolution Authorizing the City to Renew a Policy with EMI to Provide Dental Benefits for City Employees for Fiscal Year 2014-2015. Councilmember Huynh seconded the motion.

A roll call vote was taken:

MINUTES OF COUNCIL REGULAR MEETING – APRIL 21, 2015

-5-

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16992

RESOLUTION NO. 15-69, APPROVE A FRANCHISE AGREEMENT WITH XO COMMUNICATIONS SERVICES, LLC, FOR A TELECOMMUNICATIONS NETWORK IN THE CITY

Mayor Bigelow presented proposed Resolution No. 15-69 that would approve a Franchise Agreement with XO Communications Services, LLC, for a telecommunications network in the City.

The subject agreement would allow XO Communications to establish the telecommunications network in, under, along, over and across present and future rights-of-ways in the City.

After discussion, Councilmember Vincent moved to approve Resolution No. 15-69, a Resolution Approving a Franchise Agreement with XO Communications Services, LLC, for a Telecommunications Network in the City. Councilmember Lang seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16993

RESOLUTION NO. 15-70, AUTHORIZE THE CITY TO ACCEPT A QUIT CLAIM DEED AND A PUBLIC UTILITY AND STREET LIGHTING EASEMENT FROM DEVIL'S CASTLE, LLC, FOR A PORTION OF PROPERTY LOCATED AT 6519 WEST SR-201 SOUTH FRONTAGE ROAD

MINUTES OF COUNCIL REGULAR MEETING – APRIL 21, 2015

-6-

Mayor Bigelow presented proposed Resolution No. 15-70 that would authorize the City to accept a Quit Claim Deed and a Public Utility and Street Lighting Easement from Devil's Castle, LLC, for a portion of property located at 6519 West SR-201 South Frontage Road.

Devils Castle, LLC had signed a Quit Claim Deed for right-of-way on the SR-201 South Frontage Road, the owner of the property for the proposed Great Western Leasing site. The description for the subject property currently included a portion of the SR-201 South Frontage Road. As the right-of-way had not been previously dedicated or conveyed to the City, conveyance of right-of-way for the frontage road would be required as a condition of approval.

After discussion, Councilmember Huynh moved to approve Resolution No. 15-70, a Resolution Authorizing the City to Accept a Quit Claim Deed and a Public Utility and Street Lighting Easement from Devil's Castle, LLC for a Portion of Property Located at 6519 West SR-201 South Frontage Road. Councilmember Nordfelt seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY CITY COUNCIL, THE REGULAR MEETING OF TUESDAY, APRIL 21, 2015, WAS ADJOURNED AT 6:59 P.M., BY MAYOR BIGELOW.

I hereby certify the foregoing to be a true, accurate and complete record of the proceedings of the Regular Meeting of the West Valley City Council held Tuesday, April 21, 2015.

MINUTES OF COUNCIL REGULAR MEETING – APRIL 21, 2015

-7-

Sheri McKendrick, MMC
City Recorder

DRAFT

May 2015 EAC Employee of the Month
Detective Justin Boardman
Police Department

I would like to nominate Detective Justin Boardman as Employee of the Month. Detective Boardman is a great example of the many things that are going right in our Police Department. As featured in an article on ABC4 News' website, Detective Boardman has been working to improve the way that police officers take statements from victims of rape and sexual assault. He has been asked to train officers from many different departments as he has helped develop a new methodology of interviewing the victims.

Evidence indicates that officers think that victims are lying about assaults, but really, they are just victims of trauma and respond in that way. Detective Boardman has been training officers at National conferences and has helped officers from 47 states and 3 countries to improve their techniques and to take this trauma into consideration as they interview.

Detective Boardman was honored for his efforts last week when he received the "Visionary Voice" award from the National Sexual Violence Resource Center. It is only fitting that we honor his efforts as well.

Nominated by Nic Hales

The comment period is limited to 30 minutes. Any person wishing to comment shall limit their comments to five minutes. Any person wishing to comment during the comment period shall request recognition by the Mayor. Upon recognition, the citizen shall approach the microphone. All comments shall be directed to the Mayor. No person addressing the City Council during the comment period shall be allowed to comment more than once during that comment period. Speakers should not expect any debate with the Mayor, City Council or City Staff; however, the Mayor, City Council or City Staff may respond within the 30-minute period.

Item: _____
Fiscal Impact: \$185,000.00
Funding Source: Storm Water Utility
Account #: 36-7532-40750-75179-0000
Budget Opening Required: No

ISSUE:

Award Contract for the 2600 South Ditch Piping Project

SYNOPSIS:

Lowest responsible bid was received by Cowboy Contractor Corporation for the amount of \$165,726.00.

BACKGROUND:

Bids were opened for the project on April 14, 2015. A total of eleven (11) bids were received.

The 2600 South ditch is an open channel which is part of the city's storm drain system. This particular segment of open channel is the last remaining un-piped portion of a major storm drain line that drains a large area between 3600 West and 3270 West from approximately 2200 South to 2600 South. The ditch in its current condition is nearly un-maintainable. The project consists of the installation of approximately 550 feet of 60-inch pipe, along the back lot lines of multiple properties. This project will ease the maintenance burden, and reduce upstream flooding risks.

This project was previously bid in September 2014, but due to right-of-way delays the contract was not executed. The property access issues have since been resolved and the project was re-bid since the previous low-bidder opted not to execute the contract after the delays.

Funds are available in the FY14-15 Budget, and no budget opening is necessary.

RECOMMENDATION:

Award the contract to Cowboy Contractor Corporation in the amount of \$165,726, and authorize the Public Works Department to spend no more than \$185,000 in potential change orders.

SUBMITTED BY:

Daniel Johnson, City Engineer

WEST VALLEY CITY, UTAH

RESOLUTION NO. _____

**A RESOLUTION AWARDING A CONTRACT TO
COWBOY CONTRACTOR CORPORATION FOR THE
2600 SOUTH DITCH PIPING PROJECT.**

WHEREAS, proposals were solicited from qualified contractors for the 2600 South Ditch Piping Project; and

WHEREAS, Cowboy Contractor Corporation (herein "Cowboy") submitted the lowest responsible bid for said work; and

WHEREAS, Cowboy meets all other requirements of the proposal specifications; and

WHEREAS, the City Council of West Valley City, Utah, does hereby determine that it is in the best interest of the citizens of West Valley City to award the 2600 South Ditch Piping Project to Cowboy;

NOW, THEREFORE, BE IT RESOLVED by the West Valley City Council as follows:

1. Cowboy is hereby awarded the contract to perform the 2600 South Ditch Piping Project.
2. Said contract shall be in an amount not to exceed \$165,726.00, with authorization to spend an amount not to exceed \$185,000.00 in potential change orders.
3. The Mayor is hereby authorized to execute a contract with Cowboy to perform the 2600 South Ditch Piping Project, subject to the final approval of the contract by the City Manager and the City Attorney's Office.

PASSED, APPROVED and MADE EFFECTIVE this _____ day of _____, 2015.

WEST VALLEY CITY

MAYOR


ATTEST:

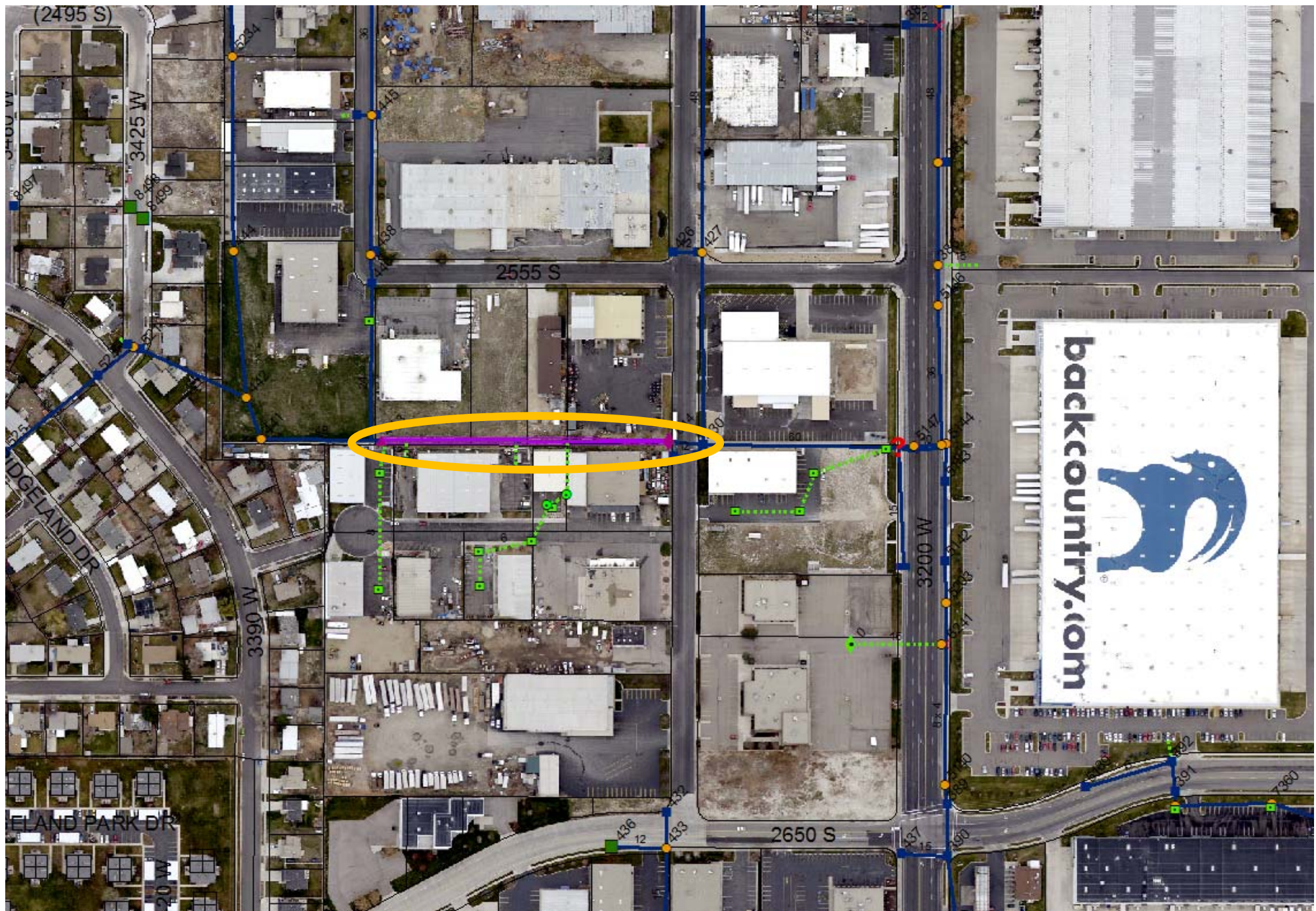
CITY RECORDER

West Valley City, Utah - Bid Tabulation Summary

2600 S Ditch Piping Project SWU-326

Opening Date: April 14, 2015 @ 10:00am

	Bid Totals	City Provider Preference (1%)	Other Prefs. (Veteran, Safety, Drug Testing, Job Training, Health Insurance, Non- Discrimination) (1%)	Total Bid Evaluation Preference Reduction	Bid Evaluation Total with Preference Reduction (Used Only for Determination of Low Bidder)
Engineer's Estimate	\$ 204,190.00				
Response 1		\$0.00	\$0.00		
Cowboy Contractor Corp.	\$ 165,726.00	0%	0%	\$0.00	\$165,726.00
Response 2		\$0.00	(\$1,836.67)		
Silver Spur Construction	\$ 183,667.00	0%	-1%	(\$1,836.67)	\$181,830.33
Response 3		\$0.00	\$0.00		
Arrow Engineering	\$ 206,985.00	0%	0%	\$0.00	\$206,985.00
Response 4		\$0.00	\$0.00		
Lyndon Jones	\$ 225,039.00	0%	0%	\$0.00	\$225,039.00
Response 5		\$0.00	\$0.00		
KK & L	\$ 230,201.30	0%	0%	\$0.00	\$230,201.30
Response 6		\$0.00	\$0.00		
Wardell Brothers Const.	\$ 244,465.00	0%	0%	\$0.00	\$244,465.00
Response 7		\$0.00	\$0.00		
Braker Construction	\$ 249,915.00	0%	0%	\$0.00	\$249,915.00
Response 8		\$0.00	\$0.00		
MC Contractors	\$ 291,437.00	0%	0%	\$0.00	\$291,437.00
Response 9		\$0.00	\$0.00		
MC Green & Sons	\$ 298,740.00	0%	0%	\$0.00	\$298,740.00
Response 10		\$0.00	\$0.00		
England Construction	\$ 322,190.00	0%	0%	\$0.00	\$322,190.00
Response 11		\$0.00	\$0.00		
Fusion Pipeline	\$ 602,449.00	0%	0%	\$0.00	\$602,449.00



2600 South Ditch Piping Project

Item #:	
Fiscal Impact:	\$45,000
Funding Source:	Park Impact Fees
Account #:	
Budget Opening Required:	No

ISSUE:

Increase Contract price for Glenn Weaver Memorial Park at the Vistas by \$45,000.

SYNOPSIS:

Increase the Contract price with Ace Construction, for Glenn Weaver Memorial Park at the Vistas from \$930,943.09 by \$45,000 to a total of \$975,943.09 to provide for contract changes and additions needed to complete the Park

BACKGROUND:

During Construction of the Park, increases in material and work quantities were added to accommodate for changes requested and deemed necessary for the project. For example, additional retaining wall, additional veneer wall, additional sod and bark, and privacy slats in chain link fence were added. An additional .23 acres of adjacent land was also added to the project. An increase in spending authority to the contract of \$45,000 is needed bringing the total contract to \$975,943.09.

RECOMMENDATION:

Approve the request to increase the contract amount.

SUBMITTED BY:

Kevin Astill, Parks and Recreation Director

WEST VALLEY CITY, UTAH

RESOLUTION NO. _____

**A RESOLUTION APPROVING CHANGE ORDER
NO. 8 TO THE CONTRACT WITH ACE
CONSTRUCTION FOR THE CONSTRUCTION OF
THE GLENN WEAVER MEMORIAL PARK.**

WHEREAS, West Valley City contracted with Ace Construction for the construction of the Glenn Weaver Memorial Park (the “Project”); and

WHEREAS, during construction of the Project, increases in material and work quantities were added to accommodate for changes requested and deemed necessary; and

WHEREAS, the City Council of West Valley City, Utah, does hereby determine that it is in the best interest of the citizens of West Valley City to increase the contract amount in order to properly complete said Project;

NOW, THEREFORE, BE IT RESOLVED by the City Council of West Valley City, Utah as follows:

1. Change order No. 8, in the amount of \$45,000, is hereby approved and the City Manager is hereby authorized to execute said change order subject to final approval of the form of the document by the City Attorney’s Office.
2. The contract between West Valley City and Ace Construction, originally in the amount of \$886,612.47 and increased by \$44,330.62 by Resolution No. 14-159, is hereby increased by an additional \$45,000, for a total of \$975,943.09.

PASSED AND APPROVED this _____ day of _____, 2015.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER

**WEST VALLEY CITY
CONTRACT CHANGE ORDER**

Change Order No: #8 Date: April 23, 2015

Owner: West Valley City Address: 3600 S. Constitution Blvd., WVC, UT 84119

Project Number: **WVC P606 (14)** Project: Glenn Weaver Memorial Park at the Vistas

**To: A.C.E. Landscape
882 North 400 East
American Fork, Utah 84003**

You are hereby requested to comply with the following changes in the contract specifications and drawings:

Item No.	Description	Decrease in Contract Price	Increase in Contract Price
1.	Increases in material and line item quantities to complete contract. (retaining wall, rock veneer, sod, bark, additional .23 acre landscaping)		\$45,000.00
Total Decrease			
Total Increase			\$45,000.00
NET CONTRACT PRICE CHANGE			\$45,000.00

The sum total of **\$45,000.00** is hereby added to the total contract amount. A total of **0 days** is hereby added to the contract time.

ACCEPTED BY: _____
Contractor

Date

RECOMMENDED BY: _____
Project Manager

Date

APPROVED BY: _____
Owner

Date

Item: _____
Fiscal Impact: _____ None _____
Funding Source: _____
Account #: _____
Budget Opening Required: ☐

ISSUE:

A resolution approving a lease agreement with North Jordan Irrigation Company for .17 acres of property owned by West Valley City and located at 3750 South 3600 West.

SYNOPSIS:

North Jordan Irrigation Company wishes to lease .17 acres of West Valley City property that will aid canal operations. This agreement sets out the terms and conditions of the lease.

BACKGROUND:

For the sum of \$1 per year, North Jordan Irrigation Company will lease a .17 acre parcel of West Valley City property adjacent to the existing canal. The canal company has agreed to maintain the property as a condition for its use.

RECOMMENDATION:

City staff recommends approval of the resolution.

SUBMITTED BY:

West Valley City Administration.

WEST VALLEY CITY, UTAH

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH NORTH JORDAN IRRIGATION COMPANY FOR THE LEASE OF .17 ACRES OF CITY PROPERTY LOCATED AT 3750 SOUTH 3600 WEST.

WHEREAS, West Valley City wishes to lease .17 acres of City-owned land to North Jordan Irrigation Company for use in canal operations; and

WHEREAS, North Jordan Irrigation Company has agreed to lease the land from West Valley City subject to appropriate terms and conditions, including maintenance of the City-owned property; and

WHEREAS, an agreement has been prepared for execution by and between the City and North Jordan Irrigation Company, a copy of which is attached hereto and entitled, "Lease Agreement," which sets forth the rights, duties, and obligations of each of the parties with respect thereto; and

WHEREAS, the City Council of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to approve the Lease Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of West Valley City, Utah, that the Lease Agreement with North Jordan Irrigation Company is hereby approved in substantially the form attached, and that the Mayor is hereby authorized to execute said Agreement for and in behalf of West Valley City, subject to approval of the final form of the Lease Agreement by the City Manager and City Attorney's Office.

PASSED, APPROVED, and MADE EFFECTIVE this _____ day of _____, 2015.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter the "Agreement") is entered into this _____ day of _____, 2015, by and between West Valley City, a Utah municipal corporation (hereinafter the "City") located at 3600 Constitution Boulevard, West Valley City, Utah, 84119, and North Jordan Irrigation Company (hereinafter "NJIC"), a Utah corporation with principal offices located at 4788 S. Hidden Cove Drive, Taylorsville, Utah, 84123. Collectively the City and NJIC are referred to as the "Parties".

RECITALS:

WHEREAS, the City owns the property located at 3750 South 3600 West in West Valley City (hereinafter "the Property"), and further described as parcel #15-32-276-039-0000 consisting of .17 acres, and described in Exhibit A; and

WHEREAS, the City has determined that it is in the best interests of the City to lease the Property to NJIC for canal operations; and

WHEREAS, NJIC desires to lease the Property, and has agreed to maintain the Property on behalf of the City;

NOW, THEREFORE, in consideration of the mutual promises of the Parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT:

1. PURPOSE

The purpose of this Agreement is to grant a lease of the Property and Improvements on the property to NJIC for the purpose of operating an irrigation company, storing equipment, and making improvements on the property toward that purpose. Existing improvements are defined and limited to the chain link fence located on the property at the time of execution of this Agreement and will be referred to in this document as "Improvements".

2. PROPERTY LEASE

The City does hereby lease, rent, and demise to NJIC, and NJIC does hereby take, accept, and lease from the City, the Property and its Improvements, upon the terms and conditions and for the purposes set forth in this Agreement, to have and hold for the term set forth in this Agreement. The Property and its Improvements are leased to NJIC "as-is, where-is," with no warranty offered by the City as to their condition or suitability for NJIC's purposes. The physical description of the Property is attached to this Agreement as Exhibit A.

3. TERM OF LEASE

The Term of this Agreement shall commence on the date of the execution of this Agreement by the Parties and shall end on July 1, 2035. If neither party seeks termination of the Lease prior to its expiration, the Lease shall automatically renew under the terms listed in this Agreement for consecutive 12 month periods, or until either party terminates the lease.

4. TERMINATION

Either the City or NJIC may terminate this Agreement at any time with ninety days' written notice.

During the Term of this Agreement, NJIC shall have the right to the use and occupancy of the Property for the purposes and on the terms and conditions set forth herein.

5. CONSIDERATION; RENTAL AND FEE PAYMENTS

As consideration for the lease to occupy and use the Property herein granted to NJIC, and for the agreements of the City contained herein, NJIC hereby agrees to pay one dollar (\$1.00) annually to the City.

6. LAWFUL USE; NEGATIVE COVENANTS OF NJIC

- A. NJIC hereby agrees to comply with all applicable federal, state, and local laws, rules, ordinances, and regulations while managing, operating, or conducting activities at the Property during the Term of this Agreement.
- B. NJIC shall not do, or permit or authorize others to do, any of the following:
 - i. Knowingly or intentionally engage in any act that, to an ordinarily prudent person in the position of NJIC, would be reasonably foreseeable to cause substantial or irreparable damage to the Property and/or its Improvements.
 - ii. Knowingly use or occupy, or knowingly permit the Property, or any part thereof to be used or occupied, for any unlawful, disreputable, or hazardous use (including the prohibited or unauthorized use, storage, or disposal of any Hazardous Substance), or operate or conduct the business of the NJIC in any manner known to constitute or give rise to a nuisance of any kind.

7. NEGATIVE COVENANTS OF CITY

The City shall not interfere with NJIC's rights or benefits granted by this Agreement.

8. FIXTURES

NJIC may make improvements and install fixtures on the property. Upon expiration of the Term, NJIC must remove all Fixtures from the property, and repair and restore the Property and Improvements to their pre-Agreement condition.

9. LIENS

NJIC shall not permit the lien of any contractor, subcontractor, mechanic, materialman, laborer, architect, or any other person or entity arising out of work, material or services performed or supplied or contracted for NJIC, or those claiming by, through or under it, to be or remain a lien upon the Property. NJIC shall indemnify, defend, and hold the City harmless from any such liens.

10. FEES; TAXES; ASSESSMENTS

NJIC shall pay all applicable fees, charges, and taxes, both personal and property, if any, resulting from its possession, occupancy, management, and use of the Property. In the event a "possessory interest tax" or privilege tax is imposed on NJIC, such tax shall be the sole responsibility of NJIC, and shall be paid by NJIC.

11. MAINTENANCE AND CARE OF THE PROPERTY

- A. NJIC agrees that it shall comply with all applicable building and fire codes in its use and of the Property.
- B. NJIC agrees to keep the Property and its Improvements free from damage by NJIC, its employees, agents, or invitees.
- C. In the event of damage to the Property and/or its Improvements due to the acts or omissions of NJIC, its employees, agents, or invitees, NJIC agrees to, at the City's option, pay the sums needed to restore the Property or Improvements or repair the damage.

12. VACATING AND RESTORING THE PROPERTY

- A. Upon termination of the Agreement, NJIC shall vacate the Property and return possession of the Property to the City in a condition similar to which it was received by NJIC. However, prior to such return, NJIC shall, at its sole cost, restore the Property to its condition as of the execution of this Agreement.

13. HAZARDOUS WASTE

- A. For the purpose of this Agreement, the following terms shall be defined as provided below, unless the context clearly requires a different meaning:
 - i. Law or Regulation shall mean any environmentally-related local, state, or federal law, regulation, ordinance, or order (including, without limitation, any final order of any court of competent jurisdiction of which NJIC has knowledge) now or hereafter in effect, including, but not limited to, the

Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act.

- ii. Hazardous Substance shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination, or cleanup.
- B. The City represents and warrants that to the best of its knowledge, the Property does not contain any Hazardous Substance found to be in violation of any applicable Law or Regulation. The City shall not cause to occur upon, in, or about the Property, or permit the Property to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, any Hazardous Substance, except in compliance with all applicable Laws and Regulations. The City will comply with every applicable Law and Regulation regulating any Hazardous Substance found in, on, or about the Property and promptly remedy any violation of each such Law or Regulation caused by the City or its employees or contractors.
- C. NJIC shall comply with every applicable Law and Regulation regulating any Hazardous Substance found on or about the Property, and shall not cause to occur upon, on, or about the Property, or use the Property to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, any Hazardous Substance, except in compliance with all applicable Laws and Regulations. NJIC shall provide the City with copies of all Material Safety Data Sheets (MSDS), environmentally related regulatory permits or approvals (including revisions or renewals), and any correspondence NJIC receives from, or provides to, any governmental unit or agency in connection with NJIC's handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous Substance in or about the Property.
- D. If either party violates any of the terms of this section concerning the presence or use of any Hazardous Substance or the handling or storing of hazardous wastes, such party promptly shall take such action as is necessary to mitigate and correct the violation. If NJIC does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in its place, to come onto the premises, and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the City determines that NJIC is in violation of any Law or Regulation, or that NJIC's actions or inactions present a threat of violation or a threat of damage to the Property, the City reserves the right to enter onto the Property and take such corrective or mitigating action as the City

deems necessary. All costs and expenses incurred by the City, where an actual violation had or would have occurred, shall become immediately due and payable by NJIC upon presentation of an invoice therefore by the City.

14. INDEMNITY/WAIVER

- A. To the fullest extent permitted by law, NJIC shall indemnify, hold harmless, and, at the City's option, defend the City from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees or other liability, for death or injury to any person or damage to property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent act or omission of NJIC, including its agents, its employees, independent contractors, concessionaires, and patrons, in or about the Property. Employees of the City or the City who are guests of NJIC shall be considered members of the general public.
- B. If the City, pursuant to the provisions of this section, exercises their option to require NJIC to defend them, then NJIC may participate in said defense for the purpose of ensuring that the attorney's fees and costs of defense are reasonable and necessary.

15. SURVIVAL

NJIC's responsibilities contained in this Agreement, Section 14 INDEMNITY/WAIVER, shall survive the expiration or termination of this lease.

16. INSURANCE

- A. NJIC, throughout the Term of this Agreement, shall:
 - i. Maintain public liability insurance against claims for bodily injury, personal injury, or death or damage to property occurring upon, in, or about the Property in a minimum amount of Two Million Dollars (\$2,000,000) combined single limit per occurrence, and not less than Five Million Dollars (\$5,000,000) in the aggregate. The coverage shall be in the nature of Broad Form Commercial General Liability coverage and shall specifically include, at minimum, the following types of coverage: (i) Premises Operations; (ii) Product Completed Operations Hazard; (iii) Broad Form Contractual Insurance; (iv) Independent Contractors; (v) Comprehensive Form; (vi) Broad Form Property Damage; and (vii) Personal Injury.
 - ii. Maintain worker's compensation coverage in a minimum amount at no times less than as required by the workers compensation laws of the State of Utah.
- B. All insurance policies required under this section shall:

- i. Be issued by insurers of recognized responsibility, licensed or permitted to do business in the State of Utah. Insurance is to be placed with insurers with an AM Best rating of no less than an A- Carrier, with a rating of VII or higher.
 - ii. Provide that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, or otherwise materially altered, without at least thirty (30) days' prior written notice by certified mail, return receipt requested, to the City. Certificates evidencing such shall be submitted to the City upon execution of this Agreement.
- C. All public liability policies maintained under this section shall include the City and their respective employees, officers, officials, agents, volunteers, and assigns as primary insured. Any reference to the City, either in the provisions of this section or in any policies provided pursuant to this Agreement, shall be deemed to include the City and the City's employees, officers, officials, agents, volunteers, and assigns.
- D. The coverage provided by the insurance policies maintained under this section shall be primary insurance with respect to the City, and the City's employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the City and/or City employees, officers, officials, agents, volunteers, and assigns shall be in excess of NJIS's insurance and shall not contribute to or with it. Accordingly, underwriters shall have no right of recovery or subrogation against the City or City employees, officers, officials, agents, volunteers, and assigns, it being the intent of the Parties that the insurance policies maintained under this section shall protect all Parties and be primary coverage for any and all losses covered by the insurance.

17. FORCE MAJEURE

If either party to this Agreement is prevented from performing its obligations under the terms of this Agreement due to the acts of third parties, other than those hired by or affiliated with the City or NJIC, an Act of God, or some other force majeure, it is hereby stipulated that no claim shall be made against the other party for damages.

18. BREACH BY NJIC

The following acts and omissions shall constitute a default and material breach of this Agreement:

- A. NJIC's violation of any material condition, representation, warranty, covenant, provision, or obligation on its part contained in this Agreement, where such default or deficiency in performance was not remedied within fifteen (15) days of receipt of written notice of such violation or deficiency.

- B. NJIC's failure to pay to the City, when due, the Rental Payments and Fees, or any other amounts due under this Agreement.

19. BREACH BY CITY

The following acts and omissions shall constitute a default and material breach of this Agreement by the City:

- A. The City's violation of any material condition, warranty, representation, covenant, or provision of this Agreement, where such default or deficiency in performance was not remedied within fifteen (15) days of receipt of written notice of such default or deficiency.

20. NOTICE AND REMEDIES FOR BREACH

- A. In the event either party fails to perform any obligation required by this Agreement, whether imposed by law, ordinance, regulation, or otherwise, or violates any provision of this Agreement, the other party shall notify the breaching party of such failure or violation and, except where impracticable, shall provide the other with a reasonable period to correct, remedy, or cease such failure or violation, which period shall not exceed fifteen (15) days after the date of such notice, unless the nature of the notified party's obligation is such that more than fifteen (15) days is reasonably required for its performance, in which case the notified party shall not be in default, if, within such fifteen (15) day period, it commences the activity necessary to enable it to perform, and thereafter diligently undertakes such activity to its completion. Nothing in this Agreement shall enable NJIC to avoid liability for interest on any delinquent payments due to the City.
- B. After expiration of the cure period provided in Subsection 20(A) above:
 - i. In the event NJIC fails to correct, remedy, or cease such breach or violation within the time specified in the City's notice, the City may, at the City's sole option, terminate this Agreement; reenter the Property; lease and license others to use the Property; and receive rent and license fees therefore as if this Agreement had not been made. The City shall also have such other remedies as may be available to it, which shall include, without limitation, the right to injunctive relief to restrain any breach or violation, and the right to invoke any remedy allowed by law or in equity, including the right to money damages and consequential damages, but not including punitive damages. The City shall take reasonable measures to mitigate any damages.
 - ii. In the event the City fails to correct, remedy, or cease such breach or violation within the time specified in NJIC's notice, NJIC's sole remedy shall consist of the right to injunctive relief to restrain any breach or violation and/or specific performance.

- C. At any time after the Term of this Agreement, the City may remove from the Property. Any items removed by the City pursuant to this section shall be returned to NJIC at NJIC's cost, if any.
- D. The rights and remedies given to the Parties in this Agreement are distinct, separate, and cumulative remedies, and none of them, whether or not exercised by the party, shall be deemed to be in exclusion of any of the others provided herein or by law or equity.
- E. The provisions of this section shall survive the termination of this Agreement.

21. NOTICES

- A. Unless otherwise provided in this Agreement, all notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by telecopy (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective Parties listed below. Notice shall be deemed delivered upon receipt or refusal to accept delivery at the addresses specified in this section, but each party may change its address by written notice given in accordance with this section.

To NJIC: North Jordan Irrigation Company
Attn: Larry Wiley
4788 S. Hidden Cove Drive
Taylorsville, Utah 84123

To the City: West Valley City
Attn: City Manager
3600 Constitution Boulevard
West Valley City, Utah 84119

22. ASSIGNMENT BY NJIC

This Agreement may be assigned or transferred by NJIC only with the prior written permission of the City, which may be withheld in the City's sole discretion.

23. ASSIGNMENT BY CITY

Upon written notice to NJIC, the City may assign any and all obligations and rights that it may have under this Agreement.

24. ATTORNEY'S FEES

In the event there is a default under this Agreement, and it becomes reasonably necessary for either party to employ the services of an attorney in connection with the litigation or arbitration of a default, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing or in terminating this Agreement.

25. ENTIRE AGREEMENT

This Agreement, including all exhibits attached hereto and all other documents incorporated herein by reference, contains the entire agreement between the Parties, and no statement, promise, or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified, or altered, except in writing signed by both Parties.

26. CONSTRUCTION OF AGREEMENT

This Agreement is the result of the joint efforts and negotiations of the Parties and all of the Parties assume joint responsibility for the form and of the contents of this Agreement.

27. APPLICABLE LAWS

This Agreement shall be construed under and in accordance with the laws of the State of Utah and the laws of the United States of America. The venue for all actions related to this Agreement shall be Salt Lake County, Utah.

28. AMENDMENT

No amendments, modifications, or alterations of the terms of this Agreement shall be binding unless the same be in writing, date subsequent to the date of this Agreement, and duly executed by the Parties hereto.

29. SEVERABILITY; NON-WAIVER

- A. The illegality or unenforceability of any of the provisions of this Agreement shall not render the remainder unenforceable.
- B. Waiver by the City or NJIC of any Term of this Agreement in any specific circumstance shall not be deemed a waiver in any subsequent circumstance.

10. NO JOINT VENTURE

This Agreement is not intended to create an agency or joint venture relationship between NJIC and the City.

31. DISCRIMINATION PROHIBITED

NJIC, in its policies with respect to the use and operation of the Property, shall comply with applicable federal, state, and local laws governing nondiscrimination in business and employment practices.

32. EFFECTIVE DATE

The terms, conditions, and obligations of this Agreement shall become effective upon the execution of this Agreement.

33. MISCELLANEOUS OBLIGATIONS AND REPRESENTATIONS

- A. NJIC agrees, pledges, and commits that it is duly organized, validly existing, and has the power and authority necessary to execute and deliver this Agreement and to perform its obligations hereunder; that this Agreement has been approved by all requisite action of its governing board; and that this Agreement is valid, binding, and enforceable against NJIC in accordance with its terms.
- B. The City hereby represents and warrants to NJIC that it has the power and authority to execute and deliver this Agreement; that this Agreement has been approved by all requisite action of its governing board; and that this Agreement is valid, binding, and enforceable against the City in accordance with its terms.

(Signatures follow on the next page.)

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement as of the day and year first above written.

WEST VALLEY CITY

Mayor

ATTEST

City Recorder

NORTH JORDAN IRRIGATION COMPANY

By: _____

Title: _____

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 2015, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is the _____ [title] of North Jordan Irrigation Company, a Utah corporation, and that this Lease Agreement was signed by him on behalf of said corporation by authority of its bylaws or of a Resolution of its board of Directors, and he acknowledged to me that said corporation executed the same.

Notary Public

EXHIBIT A

Description of the Property

Real property located at 3750 South 3600 West, West Valley City Utah. Further described as parcel # 15-32-276-039-000, consisting of 0.17 acres. Property Legal Description:

BEG S 89-55'22" W 1336.5 FT & N 159.75 FT FR E ¼ COR OF SEC 32, T 1S, R 1W, S L M; N 50 FT; S 44-57 '40" W 35.38 FT; S 89-55'20" W 169.94 FT; N 64-30' W 65.8 FT; S 5341 FT M OR L; N 89-55'20" E 253.42 FT M OR L TO BEG. 0.173 AC 6099-2057